

Peets, Toya - ESA

From: Jackson Rains [jacksonrains@comcast.net]
Sent: Friday, May 28, 2004 10:12 AM
To: ofccp-public@dol.gov
Subject: Comments on proposed revisions to 41 CFR Part 60-1

Date: 5/27/2004

To: Joseph DuBray, Jr. Director, Division of Policy, Planning, and Program Development OFCCP

Subject: Comments on proposed amendments to 41 CFR Part 60-1

While I agree that obtaining gender and race information on applicants is an important goal, this regulation pushes contractors to cross a very important historic line.

The simple fact is that it is illegal and an act of discrimination to inquire about an applicant's gender, race, or ethnicity. EEO is based on only considering qualifications, not gender, race, or ethnicity. Nothing in these proposed changes states this fact or reminds contractors of the importance of keeping the voluntary self-identification separate from the interviewing and selection process.

I also wonder if in its zeal to analyze adverse impact, the OFCCP has lost sight of the importance of the voluntary part of the voluntary self-identification process. Without an emphasis on voluntary, the OFCCP is asking contractors to break the spirit and letter of the EEO laws.

As a consultant working with organizations on affirmative action plans, I have seen situations in which interviewing managers have been tasked with identifying race and gender to meet these requirements, as well as situations in which the self-identification information is placed in the applicant's file where it is available to decision makers. These practices and others like them open the contractor to litigation based on gender and/or racial discrimination.

It is imperative that the final regulations inform contractors of this distinction in the law and advises them to keep the selection and the voluntary self-identification processes completely separate. They also should be advised that the employees responsible for the self-identification process should not be involved in selection.

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